



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6250-99

7 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that he be restored to his former rank of EM1 (E-6).

2. The Board, consisting of Messrs. Pfeiffer and Whitener, and Ms. Schnittman reviewed Petitioner's allegations of error and injustice on 2 February 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 30 November 1995 for two years as an EM1 (E-6). At the time of his reenlistment, he had completed more than 16 years of prior active service. His record reflects that during his prior enlistment he successfully completed level III alcohol rehabilitation treatment after two nonjudicial punishments (NJP) for

drunkenness. In 1992, he was awarded the Navy Achievement Medal for his service as the leading petty officer of the electrical division in USS WADDELL.

e. Petitioner was awarded the Navy Commendation Medal for meritorious service from September 1993 to October 1997 as course manager and lead instructor for the electric motor rewind course at Fleet Training Center, San Diego, CA.

f. Petitioner extended his enlistment on 29 April 1997 for a period of 22 months. He was selected as the "Quality Assurance Evaluator Superstar of the Month" for February 1998. He served without incident until 28 October 1998 when he received NJP for drunk and disorderly conduct. Punishment imposed consisted of a reduction in rate to EM2. He did not appeal the punishment.

g. Petitioner was recommended for the Navy Achievement Medal for his service in Diego Garcia but the recommendation was not submitted to the awards board because of the foregoing NJP. Thereafter, he was transferred and continued to serve without further incident and was awarded a second Navy Achievement Medal for meritorious service from November 1998 to September 1999 while serving as landing craft utility warehouse supply petty officer for Assault Craft Unit ONE. He was honorably transferred to the Fleet Reserve in the rate of EM2 on 30 September 1999.

g. Petitioner states that his conduct was wrong and unbecoming for a petty officer and takes full responsibility for his action. However, the incident occurred while he was serving in Diego Garcia, separated from his family. He claims during the latter part of the tour, his wife went through a traumatic incident in which intruders cut the telephone lines and power to the their home and tried to break in. Petitioner asserts that it was his own feelings of frustration and anger over this event that led him on a self-destructive path and ultimately to a relapse. During his drunken spree he blacked out and two days later, unaware of what happened, he learned that he had been charged with drunk and disorderly conduct. He sincerely regrets his relapse, and after that incident he returned to Alcoholic Anonymous for help and got his life back on track. However, he feels the punishment awarded on 28 October 1998 was unjust and unduly harsh.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that subsequent to alcohol rehabilitation, Petitioner's maintained a perfect 4.0 performance for more than seven years until his relapse. During this period, he received a Navy Achievement Medal and a Navy Commendation for his superior performance. After his relapse, Petitioner continued to perform in a superlative manner and was awarded a second Navy Achievement Medal prior to his retirement on 30 September 1999. Although the Board does not condone Petitioner's conduct, it believes his superlative record of performance prior to and subsequent to the incident greatly mitigates the misconduct. The Board further notes that Petitioner's transfer to the Fleet Reserve was in the rate of EM2 and not EM1, thus costing him thousands of dollars in retainer pay over the years. In retrospect, the Board agrees with Petitioner that the punishment imposed was unduly harsh. Accordingly, the Board concludes that it would appropriate and just to correct the record to show that the reduction in rate imposed at the NJP of 28 October 1998 was suspended for six months.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that that the reduction in rate imposed on 28 October 1998 was suspended for a period of six months.

b. That the record be further corrected to show that he was not reduced from EM1 to EM2 on 28 October 1998. This should include, but not necessarily be limited to, corrections to the following:

1. The Court Memorandum (NavPers 1070/607) dated 29 October 1998.

2. The Navy Occupational/Training and Awards History (page 4) entries.


c. That the record be further corrected to show that on 30 September 1999, Petitioner transferred to the Fleet Reserve in the rate of EM1 (E-5), vice EM2 (E-5).

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

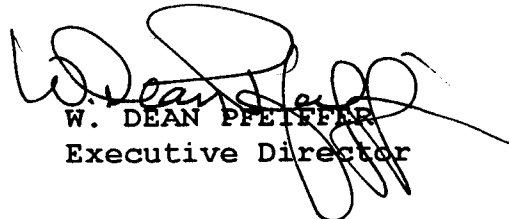
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director